621 B

(12)

No. 05-1657

FILED
NOV 10 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

WASHINGTON,

Petitioner,

v.

WASHINGTON EDUCATION ASSOCIATION,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Washington

BRIEF AMICUS CURIAE OF THE RELIGIOUS OBJECTOR MEMBERS OF THE NORTHWEST PROFESSIONAL EDUCATORS IN SUPPORT OF PETITIONER

KEVIN T. SNIDER
Counsel of Record
KAREN D. MILAM
PACIFIC JUSTICE INSTITUTE
P.O. Box 11630
Santa Ana, CA 92711
(714) 796-7150

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

INTEREST OF AMICUS CURIAE[1]

Northwest Professional Educators (NWPE), is a nonprofit professional educator organization affiliated with the Association of American Educators (AAE). Certified, classified and administrative educators of any education entity are welcome to join NWPE. NWPE members include nonunion teachers, agency fee payers, religious objectors, and even union members who join for our great benefits and services. NWPE is not a union and does not engage in collective bargaining. NWPE serves as an alternative to the union for some teachers. They want a choice in professional organizations that respects their values and their desire for a professional organization that focuses on education issues and professional services without exploiting them for political funds that may violate their personal belief systems. For others, NWPE membership supplements their union membership. NWPE respects members' values by not diverting their dues to politics unrelated to education. NWPE can help educators understand and exercise their rights regarding union membership and/or union resignation. NWPE dues are not contributed to political parties or candidates nor are they used to promote non-educational social and political issues. For dues often $400-$500 less than union dues, NWPE members receive caring, professional support and twice the legal and liability protection. Religious Objectors members count on NWPE to defend, protect, advise, and assist them

---

[1] All parties of record have been contacted and provided written consent to the filing of this amicus curiae brief. No "counsel for a party authored th[is] brief in whole or in part," and no "person or entity, other than the amicus curiae, its members, or its counsel, ... made a monetary contribution to the preparation or submission of the brief." Rule 37.6.

when job issues arise. NWPE is the only organization that provides guaranteed legal assistance for job protection issues. NWPE takes care of teachers so they can take care of their students, educators' highest priority.

SUMMARY OF ARGUMENT

This case raises important issues regarding the continued viability of federal and state statutes that protect an individual's right of conscience and the religious practice of people of faith, including, but not limited to, Title VII of the Civil Rights Act of 1964. If the Washington Supreme Court's holding is upheld, current statutory schemes enacted to protect an individual's constitutional rights may fall to the First Amendment claims of labor unions. Amicus Curiae, Northwest Professional Educators, writes to provide additional context to this dispute, to call attention to the dangerous nature of the lower court's decision and to support the position of the Petitioner in this matter that the ruling of Washington Supreme Court should be overturned.

ARGUMENT

I. Wash. Rev. Code 42.17.760 Fulfills the Government's Responsibility to Provide Procedures That Facilitate a Nonunion Employee's Ability to Protect His Rights

The issue before this Court is the constitutionality of Wash. Rev. Code Section 42.17.760, a state statute that requires a union to obtain affirmative consent prior to using a nonmember's agency fees for political purposes.

The Washington Supreme Court found that the statute significantly burdens the union's right of expressive association. In *Ellis [v. Railway Clerks*, 466 U.S. 435, 455, 104 S. Ct. 1883, 80 L. Ed.2d 428 (1984)] this Court held:

> **"Since the agency shop itself is a significant impingement on First Amendment rights, the government and union have a responsibility to provide procedures that minimize that impingement and that facilitate a nonunion employee's ability to protect his rights."** [Emphasis added.]

The statute at issue serves to fulfill that governmental responsibility. Significantly, it does not prohibit a union from using a nonmember's fees for political purposes. It merely requires the union to obtain affirmative consent prior to using those fees for such purposes.

Despite the seeming innocuous nature of the statute, the Washington Education Association failed to comply with it. The majority opinion of the Washington Supreme Court acknowledges that under state law a party challenging the constitutionality of a statute bears the burden of establishing its unconstitutionality beyond a reasonable doubt and cites to *State ex rel. Heavey v. Murphy*, 138 Wn. 2d 800, 808, 982 P.2d 611 (1999). Further, it notes that a statute is presumed constitutional and all doubts are resolved in favor of its constitutionality. *Dixon,* 78 Wn. 2d at 304. Still, despite, the high burden of proof required, the lower court held that the union had met its burden. For this reason, Amicus Religious Objector members of Northwest Professional Educators believe that this case may be cited as precedent by lower courts to strike down statutes enacted to protect the constitutional rights of religious objectors and nonunion members.

B. The WEA Endorses Candidates that Support Controversial Issues

A significant number of employees have objections to joining or financially supporting a labor union which is involved in, or supports, candidates or activities which are repugnant to their deeply held religious beliefs. Illustrative of the moral dilemma in which some nonmembers find themselves is the Washington Education Association's recent support of Eric Oemig, a candidate for Washington State Senator in the November 2006 elections. Mr. Oemig is a self proclaimed defender of "reproductive rights" and is endorsed by NARAL (National Abortion and Reproductive Rights Action League) and Pro-Choice of Washington and Planned Parenthood Votes! Washington.[2] If this Court upholds the decision of the Washington Supreme Court, lower courts may cite it as precedent to find that the statutory rights of nonmembers are "trumped" by the "expressive associative" rights of a union to which they have chosen to not associate.

II. Absent the Statutory Protections of Title VII, People of Faith Would be Vulnerable to the Arbitrary Refusal of Employers and/or Labor Unions to Accommodate Their Religious Practices

Between 1992 and 2003, claims of employment discrimination based on religion jumped some 82 percent. To put this remarkable rise in perspective, during the same period, claims involving race dropped by 3.5 percent.[3]

---

[2] http://www.voteeric.com/content.php?pid=10; http://www.voteeric.com/content.php?pid=22

[3] American Bar Association's Section of Individual Rights and Responsibilities, *Human Rights Magazine*, Religion in the Workplace and Title VII by Richard T. Foltin and James D. Standis.

Upholding this decision at issue potentially puts at risk the statutory protections of people of faith contained in Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*). Because Title VII covers private employers with fifteen or more employees, state and municipal employees and all labor unions with fifteen or more members, it provides a measure of protection for the religious beliefs of nearly all employees. If the lower court's holding stands, Title VII, as well as similar state statutes may be put at risk.

If the constitution gives a union the right to compel the individual conscience of employees, notwithstanding state statutes to the contrary, conceivably the constitutionality of each of these statutes may be at issue.

CONCLUSION

For all the reasons stated above, Amicus Northwest Professional Educators supports the position of Petitioner in this matter and urges that the ruling of the Washington State Supreme Court be overturned.

Respectfully submitted,

KEVIN T. SNIDER
Counsel of Record
KAREN D. MILAM
PACIFIC JUSTICE INSTITUTE
P.O. Box 11630
Santa Ana, CA 92711
(714) 796-7150